



December 8, 2011

Contacts: Vanessa Kauffman (FWS)  
703-358-2138  
[vanessa\\_kauffman@fws.gov](mailto:vanessa_kauffman@fws.gov)

Connie Barclay/Monica Allen  
(NOAA)  
(301) 427-8003  
[connie.barclay@noaa.gov](mailto:connie.barclay@noaa.gov)  
[monica.allen@noaa.gov](mailto:monica.allen@noaa.gov)

## **U.S. Fish and Wildlife Service and NOAA's Fisheries Service Propose Policy to Improve Implementation of Endangered Species Act**

A new federal policy proposed today will help clarify which species or populations of species are eligible for protection under the Endangered Species Act and will provide for earlier and more effective opportunities to conserve declining species.

The public is invited to comment on the policy, proposed by the Interior Department's U.S. Fish and Wildlife Service (FWS) and NOAA's National Marine Fisheries Service (NOAA Fisheries), the two federal agencies responsible for administering the Endangered Species Act (ESA). Comments will be accepted for the next 60 days.

The proposed policy will define the key phrase "significant portion of its range" in the ESA and provide consistency for how it should be applied, aiding the agencies in making decisions on whether to add or remove species from the federal list of threatened and endangered wildlife and plants. The phrase is not defined in the ESA, but appears in the statutory definitions of "endangered species" and "threatened species" in the ESA.

The policy would clarify that the FWS and NOAA Fisheries could list a species if it is endangered or threatened in a "significant portion of its range," even if that species is not endangered or threatened throughout all its range. Under the proposed policy, a portion of the range of any given species would be defined as "significant" if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction. While the services expect this circumstance to arise infrequently, this policy interpretation will allow ESA protections to help species in trouble before large-scale decline occurs throughout the species' entire range.

“This proposed interpretation will provide consistency and clarity for the services and our partners, while making more effective use of our resources and improving our ability to protect and recover species before they are on the brink of extinction,” said Fish and Wildlife Service Director Dan Ashe. “By taking action to protect imperiled native fish, wildlife and plants, we can ensure a healthy future for our communities and protect treasured landscapes for future generations.”

“A clear and consistent policy will help our partners and improve the process of evaluating species status under the Endangered Species Act,” said Eric Schwaab, NOAA’s Assistant Administrator for Fisheries.

Uncertainty about the meaning of this important phrase has led to debate and litigation. A formal opinion developed by the Solicitor of the Department of the Interior (known as the “M-Opinion”) had been applied by the FWS since March 16, 2007. But the M-Opinion was withdrawn on May 4, 2011 after two courts rejected key aspects of it. NOAA Fisheries has never applied the FWS interpretation, nor did it issue separate guidance, instead relying on a general understanding similar to the policy interpretation in today’s proposal.

This proposed policy differs substantially from the DOI’s M-Opinion interpretation. Today’s proposal requires that if a species is found to be threatened or endangered in a significant portion of its range, the entire species must be listed and protections of the ESA applied throughout its range. However, if the significant portion of the range is the exact same area inhabited by a “distinct population segment” of the species, only the distinct population segment would be listed. A distinct population segment is a vertebrate animal population or group of populations that is discrete from other populations of the species and significant to the overall species.

In contrast, under the M-Opinion, only individuals of a species found within the “significant portion of its range” were protected under the ESA. Today’s proposed policy also establishes a more specific and stringent standard to evaluate whether a portion of a species’ range would be considered “significant” than the standard applied under the M-Opinion interpretation. This higher bar will ensure that the species being evaluated for ESA protection on the basis of threats to only a significant portion of its range are truly in need of conservation.

Before finalizing the policy, FWS and NOAA are seeking public comments on the proposal for 60 days beginning on the date of the proposed rule’s publication in the *Federal Register*. All comments will be posted on <http://www.regulations.gov>. You may submit written comments and information through:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. [FWS–R9–ES–2011–0031]; or
- U.S. mail or hand delivery: Public Comments Processing, Attn: [FWS–R9–ES–2011–0031]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Until the policy is final, FWS and NOAA Fisheries have an obligation to meet statutory timeframes and make determinations in response to petitions to list, reclassify, and delist species. During this interim period, FWS and NOAA Fisheries will consider the interpretations and principles in this

proposed policy as nonbinding guidance in making individual listing determinations. As nonbinding guidance, FWS and NOAA Fisheries will apply these interpretations and principles only as the circumstances warrant, and the agencies will independently explain and justify any decision made in this interim period in light of the circumstances of the species under consideration. In preparing a final policy, FWS and NOAA Fisheries will consider all comments and information received during the comment period on this proposed policy, as well as experience gained during the interim period.

America's fish, wildlife and plant resources belong to all of us, and ensuring the health of imperiled species is a shared responsibility. To learn more about the FWS Endangered Species program, go to <http://www.fws.gov/endangered/>.

*NOAA's mission is to understand and predict changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and to conserve and manage our coastal and marine resources. Visit us at <http://www.noaa.gov> or on Facebook at <http://www.facebook.com/usnoaagov>. To learn more about the NOAA Fisheries Endangered Species program, go to <http://www.nmfs.gov/pr>.*

*The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals, and commitment to public service. For more information on our work and the people who make it happen, visit [www.fws.gov](http://www.fws.gov). Connect with our Facebook page at [www.facebook.com/usfws](http://www.facebook.com/usfws), follow our tweets at [www.twitter.com/usfwshq](http://www.twitter.com/usfwshq), watch our YouTube Channel at <http://www.youtube.com/usfws> and download photos from our Flickr page at <http://www.flickr.com/photos/usfwshq>.*

# # #